

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**DEXTER REGENE HOLMES,**

**Plaintiff,**

**v.**

**JAMES DELOACH, et al**

**Defendants.**

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**2:07-cv-219-WKW**

**SPECIAL REPORT**

COMES NOW, the defendants, **James Deloach, Phyllis Billups, Gwendolyn Tarrance, Sonja Rose, and Samuel Johnson**, by and through the Honorable Troy King, Attorney General for the State of Alabama, by assistant attorney general *Bettie J. Carmack*, and hereby file this their special report in the above-styled case and states as follows:

**PARTIES**

- A. **James Deloach** – Department of Corrections Warden, whose work location is the Draper Correctional Facility, located at P. O. Box 1107 Elmore, AL 36025.
- B. **Phyllis Billups** – Department of Corrections Deputy Warden, whose work location is the Draper Correctional Facility, located at P. O. Box 1107 Elmore, AL 36025.
- C. **Gwendolyn Tarrance** – Department of Corrections Lieutenant, whose work location is the Draper Correctional Facility, located at P. O. Box 1107 Elmore, AL 36025.
- D. **Sonja Rose** – Department of Corrections Sergeant, whose work location is the Draper Correctional Facility, located at P. O. Box 1107 Elmore, AL 36025.
- E. **Samuel Johnson** – Department of Corrections Officer, whose work location is the Draper Correctional Facility, located at

P. O. Box 1107 Elmore, AL 36025.

- G. **Dexter Regene Holmes** – a Department of Corrections Inmate, whose prison location is the Draper Correctional Facility, located at P. O. Box 1107 Elmore, AL 36025.

### **DEFENDANT'S EXHIBITS**

The Defendants submit the following exhibits:

1. **Exhibit A** – Affidavit of Phyllis Billups, including the following attachments: (1) Living Agreement, (2) Incident Report, (3) Inmate Cortez's body chart, (4) Inmate Holmes's body chart, and Inmate Holmes's disciplinary report.
2. **Exhibit B** – Affidavit of Sonja Rose
3. **Exhibit C** – Affidavit of James DeLoach, including the following attachments: (1) Inmate Holmes's disciplinary report and (2) Living agreement.
4. **Exhibit D** – Affidavit of Samuel Johnson
5. **Exhibit E** – Affidavit of Gwendolyn Tarrance

### **PLAINTIFF'S ALLEGATIONS**

Inmate Dexter Holmes (hereinafter "Inmate Holmes") contends that he was attacked by a fellow inmate, Ramon Cortez, on February 10, 2006. (Holmes's complaint, pg. 2) Inmate Holmes contends that Sergeant Rose, Officer Samuel Johnson and other officers failed to stop the attack. (Holmes's complaint, pgs. 3, 5) Inmate Holmes further contends that, after the fight, he was wrongfully punished. According to Holmes, his punishment included the following:

- 45 days loss of privileges,
- 45 days extra duty,
- being placed in a cell block with Inmate Cortez,
- being harassed by the guards, and
- stripping him of his job assignment.

(Inmate Holmes's complaint, pgs. 3-6)

## ARGUMENTS

### I. Alleged failure to protect claim

In his complaint, Inmate Holmes has attempted to raise a "failure to protect" claim against the defendants. Inmate Holmes's claim is without merit. "In a failure to protect claim, a prisoner must first show that the harm he suffered was **objectively serious** and second that **prison officials acted with deliberate indifference.**" Oliver v. Matthews, No. 2:02-CV-1373-F, 2005 WL 1270949, at \*3 (M.D. Ala. 2005). In this case, Inmate Holmes has failed to produce evidence that he was seriously injured or that prison officials acted with deliberate indifference.

On February 10, 2007, Inmate Holmes and Inmate Cortez were involved in a physical altercation. (Exhibit A, pg. 4) After the fight, Inmate Holmes was escorted to Staton Health Care Unit. (Exhibit A, pg. 4)

#### A. *Objectively serious injuries*

The first element of a "failure to protect" claim is evidence of objectively serious injuries. See Oliver v. Matthews, No. 2:02-CV-1373-F, 2005 WL 1270949, at \*3 (M.D. Ala. 2005). In this case, Inmate Holmes has not alleged any injuries from the fight and his body chart does not evidence injuries from the fight. As a result, Inmate Holmes's "failure to protect claim is due to be dismissed. Even if, arguendo, Inmate Holmes amended his complaint to allege objectively serious injuries obtained during the fight, his claim still would lack merit because he has not shown that prison officials acted with deliberate indifference.

*B. Deliberate indifference*

Inmate Holmes seems to indicate that the prison officials failed to stop the fight as a form of retaliation against him. According to Inmate Holmes, his request to participate in the Crime Bill SAP program was denied, his reclassification request was denied, his progress review request was denied, and his job assignment request was denied. Inmate Holmes seems to think that the denial of his requests and the prison officials' alleged failure to stop Cortez from "attacking" him are somehow related.

Inmate Holmes and Inmate Cortez were involved in a mutual physical altercation. When escorted to the medical facility, Inmate Holmes stated: "Involved in a fight." (Exhibit A, pg. 7) Inmate Holmes never stated that he was attacked by Inmate Cortez. Inmate Holmes also admitted at his disciplinary hearing that he was involved in a fight with Inmate Cortez. (Exhibit A, pg. 9)

Even if, arguendo, Inmate Holmes was attacked by Inmate Cortez as he has alleged, prison officials would not be liable for the attack unless they were aware of a substantial risk of serious harm to Inmate Holmes and not take reasonable measures to alleviate that risk. See Farmer v. Brennan, 511 U.S. 825, 847 (1994) ("we . . . hold that a prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it."); Brown v. Hughes, 894 F.2d 1533, 1537 (11th Cir. 1990). The prison official must know there is a strong likelihood of attack rather than a mere possibility. Edwards v. Gilbert, 867 F.2d 1271, 1276 (11th Cir. 1989).

In this case, prison officials had no way of knowing that Inmate Holmes and Inmate Cortez would be involved in a physical altercation.

Furthermore, Inmate Holmes's claim that no one attempted to stop the fight is without merit. Officer Johnson has testified by affidavit that he: "immediately radioed to Officer Randall Hawn and all available units to report to the back of F-Dorm. Sgt. Sonja Rose and Sgt. Marvin Thomas and available officers responded to Draper's recreation yard." (Exhibit D)

Because Inmate Holmes has failed to show that he was seriously injured on the day of the attack or that prison officials were deliberately indifferent to his safety, Inmate Holmes's "failure to protect" claim is due to be dismissed.

## II. Allegedly placed in a cell block with his enemy

Inmate Holmes contends that his eighth amendment rights have been violated by placing him in a cell block with his enemy. Inmate Holmes's claim is without merit. Inmate Holmes is not currently in the same dormitory with Inmate Cortez. (Exhibit B, pg. 2) After the fight, Inmate Cortez was reassigned to F-Dorm and Inmate Holmes was reassigned to A-Dorm. (Exhibit B, pg. 2) Even if, however, Inmate Holmes and Inmate Cortez were in the same dormitory, it would be with the consent of Inmate Holmes. On February 10, 2007, Inmate Holmes, Garcia, and Cortez all agreed that they could live together without "incident." (Exhibit A, pg. 3)

## III. Wrongfully punished after the fight

Inmate Holmes has made claims that he was punished inappropriately because he was not the aggressor in the fight. Inmate Holmes admitted during the disciplinary hearing that he was fighting with Inmate Cortez. (Exhibit B) "Based on the sworn

testimony of the Defendant, Witness, and the Arresting Officer under oath, the Hearing Officer [found] inmate Holmes guilty [of fighting without a weapon].” (Exhibit B, pg. 5) Because Inmate Holmes was found guilty of fighting without a weapon, prison officials could properly discipline him.

#### IV. Vague and Conclusory Claims

Inmate Holmes has made vague and conclusory claims that officers are harassing him and that officers are transporting marijuana to inmates and extorting the inmates. Inmate Holmes does not state any specific instances of officer harassment or any detailed information regarding what officers are allegedly transporting marijuana to inmates and what inmates are receiving the marijuana and allegedly be extorted.

Inmate Holmes’s claims are vague and conclusory and various courts have held that “[v]ague and conclusory allegations of civil rights violations . . . are not sufficient and must, for that reason, be dismissed.” Forehand v. Roberts, et al, 1992 WL 554241, at \*1 (M.D. Ala. 1992) *citing* Fullman v. Graddick, 739 F. 2d 553, 557 (11th Cir. 1984); Sanders v. Miller, 837 F. Supp 1106, 1109 (N.D. Ala. 1992) *citing id.*

#### V. All claims against the defendants are barred by absolute and qualified immunity

The Plaintiff’s claims should be dismissed against all of the defendants because the defendants are immune from liability. As the United States Supreme Court has stated:

There can be no doubt . . . that suit against the State and its Board of Corrections is barred by the Eleventh Amendment, unless Alabama has consented to the filing of such a suit. Edelman v. Jordan, 415 U.S. 651 (1974); Ford Motor Co. v. Department of Treasury, 323 U.S. 459 (1945); Worcester County Trust Co. v. Riley, 302 U.S. 292 (1937). Respondents do not contend that Alabama has consented to this suit, and it appears that no consent could be given under Art. I, § 14, of the Alabama Constitution, which provides that no consent could be given under Art. I, § 14, of the Alabama Constitution, which provides that ‘the State of Alabama shall never be made a defendant in any court of law or equity.’

Alabama v. Pugh, 438 U.S. 781, 782 (1978).

The Defendants are state employees, and a suit against them is a suit against the State. In addition, there has been no consent or waiver of immunity in this case. Thus, the Defendants are absolutely immune from liability.

Qualified immunity “protects government officials from civil trials and liability when their conduct in performing discretionary functions ‘violates no clearly established statutory or constitutional rights of which a reasonable person would have known.’”

Wilson v. Blankenship, 163 F.3d 1284, 1288 (11th Cir. 1998). Because the alleged acts of the Defendants consist of discretionary functions, and because the actions do not violate any clearly established constitutional or statutory rights, the Defendants are protected by qualified immunity. Wilson v. Blankenship, 163 F. 3d at 1284 (holding that the marshal, wardens, and corrections officer were protected by qualified immunity); *see also* Pinkney v. Davis, 952 F. Supp. 1561 (M.D. Ala. 1997) (holding that wardens, deputy warden, and other prison officials were entitled to qualified immunity).

## CONCLUSION

Based on the foregoing, the Defendants request that this Court dismiss the Plaintiff's complaint.

Respectfully submitted,

TROY KING  
ATTORNEY GENERAL

/s/ Bettie J. Carmack  
Bettie J. Carmack (CAR-132)  
*Assistant Attorney General*  
*Civil Litigation Division*  
11 South Union Street  
Montgomery, Alabama 36130  
Telephone: (334) 353-5305  
Facsimile: (334) 242-2433

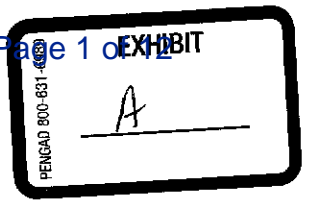
#### **CERTIFICATE OF SERVICE**

I hereby certify that I have this **15th** day of **May, 2007** served a copy of the foregoing on the plaintiff by placing a copy of the same in the United States mail, postage prepaid and addressed as follows:

**Inmate Dexter Regene Holmes**  
**AIS #247684**  
**Draper Correctional Facility**  
**P. O. Box 1107**  
**Elmore, AL 36025**

/s/ Bettie J. Carmack  
Bettie J. Carmack (CAR-132)  
*Assistant Attorney General*  
*Civil Litigation Division*





**IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA**

**Dexter Regene Holmes  
PLAINTIFF**

**CASE NUMBER: CV 06-3005**

**VS**

**Warden James Deloach,  
Deputy Warden Phyllis Billups,  
Lieutenant Gwendolyn Tarrance  
Sergeant Sonja Rose  
Officer Samuel Johnson**

**DEFENDANTS**

**A F F I D A V I T**

**Before me, the undersigned authority, a Notary Public in and for said county and State of Alabama at large, personally appeared Phyllis Billups who being know to me and being by me first duly sworn, deposes and says on oath as follows:**

**My name is Phyllis Billups, and I am presently employed as Warden II with the Alabama Department of Corrections, Draper Correctional Center, Elmore, Alabama. I am over nineteen (19) years of age.**

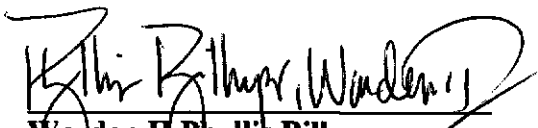
**The plaintiff in this action, Inmate Dexter Holmes claim that he has sent request forms and grievances to me, Warden II Phyllis Billups informing me that his life has been threatened by Officers and Inmates. This is untrue. I have not received any grievances or request forms from Inmate Holmes stating that his life is in danger from anyone.**

**Inmate Holmes claims that he has informed Officials about corrupt Officers transporting marijuana to inmates. Inmate Holmes has never given the names of any Corrupt Officers to me. Inmate Holmes stopped me on the main hallway one day after he received a disciplinary for Fighting without a weapon with another inmate. Inmate Holmes informed me that he would like to make a deal with me if I would disapprove a disciplinary he had received for Fighting without a Weapon. I informed Inmate Holmes that I did not make deals.**

Inmate Holmes claims that he has been placed in a hostile environment because he is housed in the same dormitory with Inmate Ramon Cortez who he was fighting with on February 10, 2007. This is untrue. Inmate Holmes is not housed in the same dormitory as Inmate Cortez. Even if Inmate Holmes and Cortez were housed in the same dormitory, it would be a result of Inmates Holmes, Cortez and Tomas Garcia signing an I/We Living Agreement on the same night as the incident stating that the problem had been resolved and they (Cortez, Garcia and Holmes) could live at the institution without any further incidents. Inmate Garcia is no longer housed at Draper. (See attached agreement) Inmate Holmes has not voiced any problems to me regarding himself and Inmates Cortez and Garcia.

Inmate Holmes alleges that he was assaulted by Inmate Cortez. This is untrue. Inmate Holmes was involved in a fight. At the actual Disciplinary Hearing during testimony, Inmate Holmes admitted that he and Inmate Cortez were fighting on the yard. The correct charge was made against Inmate Holmes for Fighting without a Weapon. (See attached Disciplinary)

I have not violated Plaintiff Dexter Holmes' Constitutional Rights in any manner. I would ask that this action be dismissed.

  
Warden II Phyllis Billups  
Draper Correctional Center

State of Alabama  
Elmore County

Sworn to and subscribed before me and under my hand and official seal this the 25th day of April 2007.

  
Notary Public  
My comm. expires 6-1-07



DON SIEGELMAN  
GOVERNOR

STATE OF ALABAMA  
DEPARTMENT OF CORRECTIONS

MICHAEL W. HALEY  
COMMISSIONER

DRAPER CORRECTIONAL CENTER  
P.O. BOX 1107  
ELMORE, ALABAMA 36025

I/WE LIVING AGREEMENT

We acknowledge that our problem has been resolved and that we can live at this Institution without further incident and/or disagreement between us. This statement is made of our own free will without threats or promises from anyone. I/We also agree that a copy of this agreement will be placed in my/our Institutional file(s) and any violation of this agreement will result in disciplinary action for all parties concerned.

This agreement is to be made a part of the inmate's Institutional file and any violation of this said agreement will be brought to the immediate attention of the Warden and/or Deputy Warden.

NAME

AMS #

INMATE'S SIGNATURE

DATE

Tomas Garcia	W/237436	Tomas Garcia	2/10/07
Ramon Cortez	W/227510	Ramon Cortez	2/10/07
Dexter Holmes	B/247684	Dexter Holmes	2/10/07

WITNESS

DATE

TIME

Sgt. Senja Rose

2/10/07

4:30pm

STATE OF ALABAMA  
DEPARTMENT OF CORRECTIONS

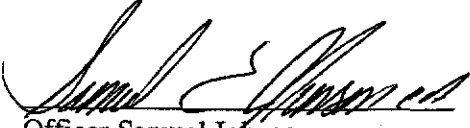
## INCIDENT REPORT

1. Institution: Draper Correctional Center		2. Date: 2/10/2007		3. Time: 4:20 PM		4. Incident Number: DCC 07-0254		Class Code: C	
5. Location Where Incident Occurred: Draper's Recreation Yard					6. Type of Incident: #35 - Fighting without a Weapon				
7. Time Incident Reported: 4:21 PM					8. Who Received Report: Sgt. Sonja Rose <i>Sgt. Sonja Rose</i>				
9. Victims:									
a.		Name N/A		No.		AIS #			
b.				No.					
c.				No.					
10. Suspects:									
a.		Name Ramon Cortez		No.		AIS # W / 227510			
b.		Dexter Holmes		No.		B / 247684			
c.				No.					
d.				No.					
e.				No.					
f.				No.					
g.				No.					
10. Witnesses:									
a.		Name N/A		No.		AIS #			
b.				No.					
c.				No.					
d.				No.					
e.				No.					
f.				No.					
g.				No.					
PHYSICAL EVIDENCE:									
12. Evidence Type: N/A									
13. Description of Evidence: N/A									
14. Chain of Evidence:									
a. N/A									
b.									
c.									
d.									
15. Narrative Summary: On February 10, 2007, Officer Samuel Johnson was assigned to Tower #2. At approximately 4:20 PM, Officer Johnson observed two unknown inmates later, identified as inmate Dexter Holmes B/247684 and inmate Ramon Cortez W/227510 engaged in a physical altercation on Draper's recreation yard behind F - Dorm. Officer Johnson immediately radioed to Officer Randall Hawn and all available units to report to the back of F- Dorm. Sergeant Sonja Rose and Sergeant Marvin Thomas and available Officers responded to Draper's recreation yard. Officer Johnson identified inmate Cortez and Holmes via radio to Sergeant Rose. Sergeant Thomas and Officer Hawn searched both inmates Cortez and Holmes. Inmates Cortez and Holmes were handcuffed and escorted to the Shift Office by Sergeant Thomas and Sergeant Rose. Upon further investigation, it was determined that inmate Holmes owed inmate Cortez (10) ten items and only paid inmate Cortez (1) one pack of cigarettes. Inmates Cortez and Holmes were engaged in a verbal altercation which escalated into a physical altercation (fight). Sergeant Rose verbally reprimanded both inmates on their negative behavior. Inmates Holmes and Cortez signed a Living Agreement (see attached). At approximately 4:42 PM, Officer Jeffery Fenderson escorted inmates Cortez and Holmes to Staton Health Care Unit. Inmates Holmes and Cortez were examined by Nurse Tara Parker (see attached body chart). Inmates Holmes and Cortez were released back into Draper's Population pending disciplinary action for rule #35 - Fighting without a weapon. No further action taken at this									

Distribution: ORIGINAL AND ONE (1) COPY to Central I & I Division  
COPY to Institutional FileCOPY to Deputy Commissioner for Operations (Class A and B ONLY)  
COPY to Central Records Office

ADOC Form 302-A - June 1, 2005

STATE OF ALABAMA  
DEPARTMENT OF CORRECTIONS  
**INCIDENT REPORT/DUTY OFFICER REPORT**  
**CONTINUATION**

Institution: Draper Correctional Center	Incident Number: DCC 07-0254	Class Code: C
Date: 2/10/2007	Type of Incident: Ruel #35 - Fighting without a weapon	
15. Narrative Summary (Continued) Page No.: 2 of 2 time.		
 Officer Samuel Johnson		

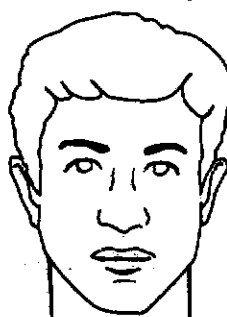
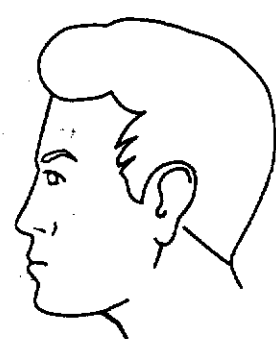
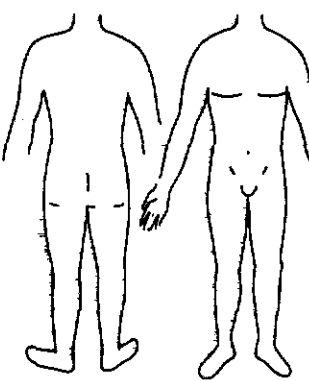




## EMERGENCY

ADMISSION DATE 2 / 10 / 07		TIME 4:45 PM	ORIGINATING FACILITY Dorner		<input type="checkbox"/> SICK CALL <input type="checkbox"/> EMERGENCY <input type="checkbox"/> OUTPATIENT	
ALLERGIES NICDA			CONDITION ON ADMISSION <input checked="" type="checkbox"/> GOOD <input type="checkbox"/> FAIR <input type="checkbox"/> POOR <input type="checkbox"/> SHOCK <input type="checkbox"/> HEMORRHAGE <input type="checkbox"/> COMA			
VITAL SIGNS: TEMP 97°			ORAL 97°	RECTAL 97°	PULSE 101	B/P 98 / 58
NATURE OF INJURY OR ILLNESS			ABRASION ///   CONTUSION #   BURN xx   FRACTURE Z   LACERATION / SUTURES Z 5) Doc Body Cont Involved in "Fight" 6) Ambulatory to 1 hour Alert & oriented Denies injury Slight abrasion noted Lt. Face 1/2 cm long No bleeding Slight swelling Lt. Face WT. 157			
PHYSICAL EXAMINATION			A) ALT. SKIN Doc Body Cont B) Doc Body Cont Release to Doc IN Satisfactory Condition Apply ice to swelling Lt. face PROFILE RIGHT OR LEFT RIGHT OR LEFT			
DIAGNOSIS			ORDERS / MEDICATIONS / IV FLUIDS   TIME   BY _____ _____ _____ _____ _____ _____ _____ _____			
INSTRUCTIONS TO PATIENT Fill out sick card as needed.						
DISCHARGE DATE 2 / 10 / 07		TIME 4:55 PM	RELEASE / TRANSFERRED TO DOC		CONDITION ON DISCHARGE <input checked="" type="checkbox"/> SATISFACTORY <input type="checkbox"/> POOR <input type="checkbox"/> FAIR <input type="checkbox"/> CRITICAL	
NURSE'S SIGNATURE C. G. [Signature]		DATE 2/10/07	PHYSICIAN'S SIGNATURE		DATE	
INMATE NAME (LAST, FIRST, MIDDLE) Cortez, Ramon			DOC# 227510		DOB	
			R/S		FAC.	



## EMERGENCY

ADMISSION DATE <b>2/10/07</b>		TIME <b>4:53 PM</b>	ORIGINATING FACILITY <b>Dorner</b>		<input type="checkbox"/> SICK CALL <input type="checkbox"/> EMERGENCY <input type="checkbox"/> OUTPATIENT	
ALLERGIES <b>NICK</b>			CONDITION ON ADMISSION <input checked="" type="checkbox"/> GOOD <input type="checkbox"/> FAIR <input type="checkbox"/> POOR <input type="checkbox"/> SHOCK <input type="checkbox"/> HEMORRHAGE <input type="checkbox"/> COMA			
VITAL SIGNS: TEMP <b>98.7</b>		ORAL RECTAL <b>96.4</b>	RESP. <b>20</b>	PULSE <b>90</b>	BP <b>122/70</b>	RECHECK IF SYSTOLIC <100> 50 <b>1</b>
NATURE OF INJURY OR ILLNESS <b>s) Doc Body Chart</b> <b>Involved in Fight -</b>  <b>o) Ambulatory to 1st floor</b> <b>Slung &amp; oriented</b> <b>Skin tear post. Rt.</b> <b>Ring finger at base</b> <b>Nail in scar</b> <b>bleeding noted. Nail</b> <b>in bed.</b>			ABRASION ///   CONTUSION #   BURN <sup>xx</sup> / <sub>xx</sub> FRACTURE <sup>Z</sup> / <sub>Z</sub> LACERATION / SUTURES			
			<b>WT: 181</b>   PROFILE RIGHT OR LEFT     RIGHT OR LEFT			
PHYSICAL EXAMINATION <b>A) Alt. Skin</b> <b>Doc Body Chart</b>  <b>P) Cleared to 1st floor</b> <b>TAO 1st floor</b> <b>Bandage dressing</b> <b>Fell out sick call if</b> <b>Redness, swelling of</b> <b>pus discharge noted</b>			ORDERS / MEDICATIONS / IV FLUIDS   TIME   BY      			
DIAGNOSIS						
INSTRUCTIONS TO PATIENT						
DISCHARGE DATE <b>2/10/07</b>		TIME <b>5:00 PM</b>	RELEASE / TRANSFERRED TO <b>Dorner</b>		CONDITION ON DISCHARGE <input checked="" type="checkbox"/> SATISFACTORY <input type="checkbox"/> POOR <input type="checkbox"/> FAIR <input type="checkbox"/> CRITICAL	
NURSE'S SIGNATURE <b>[Signature]</b>		DATE <b>2/10/07</b>	PHYSICIAN'S SIGNATURE		CONSULTATION	
INMATE NAME (LAST, FIRST, MIDDLE) <b>Holmes, Dexter</b>			DOC# <b>246284</b>	DOB	R/S	FAC. <b>Dorner</b>



ALDOC Form 225B

DCC07-0254-2

**ALABAMA DEPARTMENT OF CORRECTIONS  
DISCIPLINARY REPORT**

1. Inmate: Dexter Holmes Custody: MEDIUM AIS: B/247684
2. Facility: Draper Correctional Center
3. The above inmate is being charged by Officer Samuel Johnson with violation of rule number #35 specifically Fighting without a weapon from regulation # 403 which occurred on or about February 10, 20 07 at (time) 4:20 PM (am / pm), Location: Draper's Recreation Yard

A hearing on this charge will be held after 24 hours from service.

4. Circumstances of the violation(s) are as follows:

On February 10, 2007, at approximately 4:20 PM, Officer Samuel Johnson observed you, inmate Dexter Holmes B/247684 in a physical altercation with inmate Ramon Cortez W/227510 on Draper's recreation yard behind F- Dorm.

11 Feb 07  
Date

Samuel Johnson CO2  
Arresting Officer / Signature / Rank

5. I hereby certify that I have personally served a copy of the foregoing upon the above named inmate and I informed inmate of his/her right to present a written or oral statement at the hearing and to present written questions for the witnesses on this the 14 day of February, 20 07, at (time) 9:13 (am) (pm).

Michael G. Matthews, CO  
Serving Officer / Signature / Rank

Refuse to Sign Michael G. Matthews  
Inmate's Signature / AIS Number

6. Witness desired? NO

YES

Dexter Holmes #247684  
Inmate's Signature

7. If yes, list: NONE Michael Moore 155349

8. Hearing Date February 19, 07 Time 8<sup>00</sup> P.M. Place Draper's Shift Off

9. Inmate must be present at Hearing Room. If he/she is not present explain in detail on additional page and attach.

10. A finding is made that inmate (is / is not) capable of representing himself.

Signature / Hearing Officer

11. Plea: Not Guilty

12. The Arresting Officer, Inmate and all witnesses were sworn to tell the truth.

Signature / Hearing Officer



Guilty



JCC07-0254-2

## 13. Arresting Officer's Testimony (at the hearing):

On February 10, 2007, at approximately 4:20 PM, I, Officer Samuel Johnson observed you, inmate Dexter Holmes B/247684 in a physical altercation with inmate Ramon Cortez W/227510 on Draper's recreation yard behind F- Dorm.

QFHO: 1. Did you observe inmate Holmes fighting inmate Cortez? ANS. Yes

2. Are you positive it was inmate Holmes fighting? ANS. Yes. I saw them fighting but I didn't know their names.

3. Where were you? ANS. Tower #2.

4. Did you observe more than 2 inmates fighting? ANS. No.

## 14. Inmate's Testimony:

See attached.

QFHO:

1. Did you and inmate Cortez engage in a fight on the yard. ANS. Yes we did.

2. Was there more than one fight on the yard that day? ANS. I don't know.

Witness: Michael Moore B/155349

Substance of Testimony:

On that day, I was coming past the Basketball court. I noticed about 5 or 6 Mexican guys walking toward the urinals where inmate Holmes was. Some words were being said and one Mexican went up to Dexter and took a swing at him.

QFHO: 1. Did you observe a fight between inmate Holmes and inmate Cortez? ANS. Yes.

Witness: N/A

Substance of Testimony:

Witness: N/A

Substance of Testimony:

15. The inmate was allowed to submit written question to all witnesses. Copy of questions and answers are attached

 Signature / Hearing Officer

16. The following witnesses were not called - Reason not called

1. N/A

N/A

2. \_\_\_\_\_

3. \_\_\_\_\_

DCC07-0254-2

17. After hearing all the testimony, the hearing Officer makes the following findings of fact: (Be Specific)

The Hearing Officer finds that:

Based on the sworn testimony of the Defendant under oath who stated he was involved in a fight with inmate Ramon Cortez W/227510, the testimony of the witness who stated that he observed inmate Holmes and Cortez fighting, and the Arresting Officer who stated that he observed inmates Holmes and Cortez fighting. Therefore the Hearing Officer finds that on 2/20/07 Officer S. Johnson observed inmates Dexter Holmes B/247684 and Ramon Cortez fighting on the Recreational Yard.

18. Basis for Finding of Fact:

Based on the sworn testimony of the Defendant, Witness and the Arresting Officer under oath, the Hearing Officer finds inmate Holmes guilty as charged.

19. Hearing Officer's Decision: XXX Guilty        Not Guilty

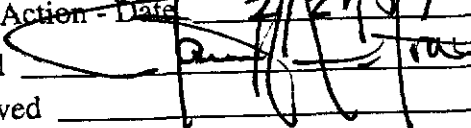
20. Recommendation of Hearing Officer:

45 Days loss of all privileges to include Store, Visiting, and Telephone. 45 Days extra duty on the Second Shift. Refer to Job Board and Classification for a review. (GTA=None)

  
Signature / Hearing Officer

Lieutenant Gwendolyn Tarrance  
Typed Name and Title

21. Warden's Action - Date 2/21/07

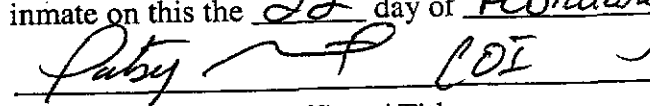
Approved 

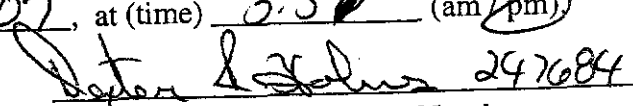
Disapproved       

Other (Specify)       

22. Reason if more than 30 calendar days delay in action.

23. I hereby certify that a completed copy of the foregoing Disciplinary Report was served on the above named inmate on this the 22 day of February, 2007, at (time) 5:50 (am/pm) (pm)

  
Signature / Serving Officer / Title

 247684  
Inmate's Signature and AIS Number

DCC07-0254-2

## Appeal

On February 14, 2007 I was served with a disciplinary report by Michael J. Matthews allegedly claiming violation of rule #35 from regulation #403 Fighting without a weapon. The Disciplinary report claims that Samuel E. Johnson observed me fighting with a Mexican named Ramon Cortez on Draper's Recreation Yard.

This Disciplinary report is untrue. As the fact will show that I was picked out of a line up of several inmates lined up on the fence Sgt. ~~Blakes~~<sup>Blase</sup> with several other officers conducted the line up, and I was singled out along with Ramon Cortez.

Officer Samuel Johnson does not know who was fighting on the recreation yard.

Sgt. ~~Blakes~~<sup>Blase</sup> conducted an investigation once Ramon Cortez, Garcia and myself were escorted to the shift office.

During this investigation I explained to Sgt. ~~Blakes~~<sup>Blase</sup> I was approached and surround by Ramon Cortez, Garcia and other Mexican. This incident has been covered up as to the true facts involved.

Sgt. ~~Blakes~~<sup>Blase</sup> knows that Garcia is the sole cause of this incident resulting from the investigation which violated something.

Note: Number 110 says inmates are not allowed to trade, barter, sell or exchange personal property; Sgt. Rose violated rules and regulations by ordering me to pay a gambling debt; By not warning all parties written up for these actions.

witnesses

as causing this incident. Garcia claimed that I owed him a bag of coffee along with the cigarettes I paid him. Since I didn't pay him the coffee Garcia, Ramon Cortez along with other Mexicans attempt to jump on me on the yard. I was forced to protect myself from Ramon Cortez, Garcia and other Mexicans.

To set the record straight these Mexican Garcia, Ramon Cortez and others is conducting a gambling pool as well as distributing drugs that I just so happen got caught up in.

These Mexicans was attempting to do me bodily harm. Ramon Cortez hit me first, and I acted in Self Defense.

Sgt. ~~Blase~~ sided with Garcia by ordering me to pay a gambling debt to Garcia all in violation of rules & regulation.

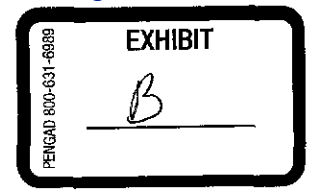
This is clearly double jeopardy because disciplinary actions were taken on February 10, 2007. Ramon Cortez was moved from the Faith dorm to F Dorm. I was moved from B dorm to A dorm. Both Ramon Cortez and I was advised to sign a peace agreement. Garcia did not receive any form of disciplinary action. This is not right. Punishment has already been administered and therefore The Disciplinary Report should be dismissed.

Sincerely

written

J. L. 2/11

2007-02-14-2



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

DEXTER REGENE HOLMES,  
#247684

Plaintiff,

Vs.

JAMES DELOACH, et al.,

**Defendants.**

# AFFIDAVIT

Before me, a Notary Public in and for said County and State of Alabama at large,  
personally appeared Sergeant Sonja Rose, who being known to me and by me first  
duly sworn, deposes, and says on oath as follows:

My name is Sonja Rose. I am currently employed as a Correctional Sergeant with the Alabama Department of Corrections assigned to Draper Correctional Center, Elmore, Alabama 36025. I am over twenty-one years of age and have personal knowledge of the facts set forth below.

I responded to a radio call which advised that there was a fight on the yard. Officer Samuel Johnson, who witnessed the fight, identified the inmates fighting to be Dexter Holmes, B/247684 and Ramon Cortez, W/227510. Officer Johnson was assigned to Tower #2. He further advised that it was only two (2) inmates fighting. I questioned both inmates, Holmes and Cortez, after they were escorted to the shift office. Inmate Holmes lied and denied having been fighting on the yard. But, later inmate Holmes admitted to borrowing some coffee and cigarettes from another inmate (Tomas

Garcia, W/237436). Earlier during chow, inmate Garcia asked inmate Holmes about the items inmate Holmes borrowed from him (Garcia). Inmate Holmes also admitted to fighting with inmate Cortez. Inmate Cortez stated that he did fight with inmate Holmes after he (Holmes) started using profanity and calling him (Cortez) names. No other inmates were identified by Officer Johnson to be involved in the fight except inmates Holmes and Cortez. I questioned inmates Holmes, Cortez and Garcia concerning remaining in general population. Inmates Holmes, Cortez and Garcia agreed to continue to live in population together without further incident. Inmates Holmes, Cortez and Garcia signed a living agreement. I instructed Officer Jeffery Fenderson to escort inmates Holmes and Cortez to Staton Health Care Unit for a body chart. Inmate Cortez was reassigned from 7 dorm (H-Dorm) and reassign to 6 Dorm (F-Dorm). Inmate Holmes was reassigned from 3-Dorm (B-Dorm) to 2 Dorm (A Dorm). Both inmates received disciplinary action for rule violation #35, Fighting without a weapon. No further action was taken.

  
Sonja Rose, COII

SWORN TO AND SUBSCRIBED before me this 2nd day of May 2007.

  
Notary Public

My Commission Expire 8-1-07



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

DEXTER REGENE HOLMES,  
#247684

)  
)

Plaintiff,

)

v.

)

2:07-CV-219-WKW

JAMES DELOACH, et al.,

)

Defendants.

)

A F F I D A V I T

Before me, a Notary Public in and for said County and State of Alabama at large,  
personally appeared Warden James DeLoach, who being known to me and by me first  
duly sworn, deposes, and says on oath as follows:

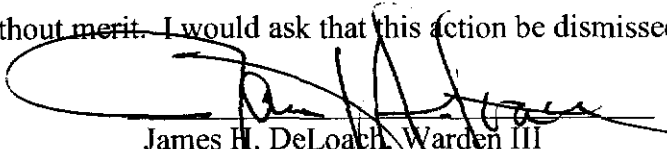
My name is James H. DeLoach. I am currently employed as a Warden III with the  
Alabama Department of Corrections assigned to Draper Correctional Center, Elmore,  
Alabama 36025. I am over twenty-one years of age and have personal knowledge of the  
facts set forth below.

The plaintiff prior to the receipt of this action has never communicated to me any  
concerns for his safety. His claim that he is assigned to a cellblock with an inmate who  
have previously assaulted him is untrue.

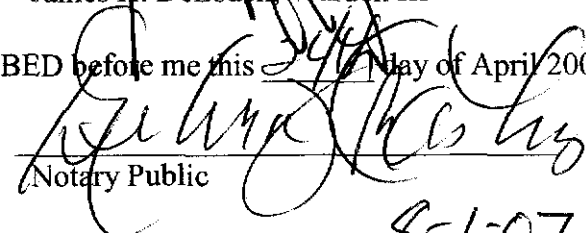
On February 10, 2007 the plaintiff was involved in a fight with another inmate the  
plaintiff was charged with violation of rule #35, Fighting without a weapon. The plaintiff  
was tried and found guilty of the charge on February 19, 2007 (see Attachment #1  
disciplinary DCC07-0254-2).

On February 10, 2007 the plaintiff signed a living agreement with inmate Ramon Cortez, 227510 stating that they could live together in general population (see Attachment #2).

The plaintiff was not assaulted but was involved in a fight because he failed to repay a debt for inmate canteen items owed to inmate Cortez. The plaintiff, inmate Dexter Holmes is appropriately classified and housed according to Alabama Department of Corrections' policies, procedures and regulations. His claim that his constitutional rights have been violated is without merit. I would ask that this action be dismissed.

  
James H. DeLoach, Warden III

SWORN TO AND SUBSCRIBED before me this 24th day of April 2007.

  
Notary Public

My Commission Expire

8-1-07



ALDOC Form 225B

# ALABAMA DEPARTMENT OF CORRECTIONS DISCIPLINARY REPORT

1. Inmate: Dexter Holmes Custody: MEDIUM AIS: B/247684
2. Facility: Draper Correctional Center
3. The above inmate is being charged by Officer Samuel Johnson with violation of rule number #35 specifically Fighting without a weapon from regulation # 403 which occurred on or about February 10, 20 07 at (time) 4:20 PM (am / pm), Location: Draper's Recreation Yard

A hearing on this charge will be held after 24 hours from service.

4. Circumstances of the violation(s) are as follows:

On February 10, 2007, at approximately 4:20 PM, Officer Samuel Johnson observed you, inmate Dexter Holmes B/247684 in a physical altercation with inmate Ramon Cortez W/227510 on Draper's recreation yard behind F- Dorm.

11 Feb 07

Date

Samuel Johnson CO2  
Arresting Officer / Signature / Rank

5. I hereby certify that I have personally served a copy of the foregoing upon the above named inmate and I informed inmate of his/her right to present a written or oral statement at the hearing and to present written questions for the witnesses on this the 14 day of February, 20 07, at (time) 9:13 (am / pm).

Michael G. Matthews, CO  
Serving Officer / Signature / Rank

Refuse to Sign Michael G. Matthews  
Inmate's Signature / AIS Number

6. Witness desired? NO

YES

Dexter Holmes #247684  
Inmate's Signature

7. If yes, list: NONE Michael Moore 155349

8. Hearing Date February 19, 07 Time 8:00 P.M. Place Draper's Shift Off

9. Inmate must be present at Hearing Room. If he/she is not present explain in detail on additional page and attach.

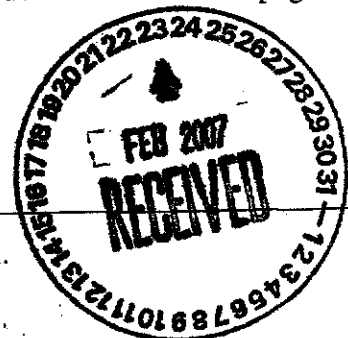
10. A finding is made that inmate (is / is not) capable of representing himself.

LT  
Signature / Hearing Officer

11. Plea: Not Guilty

12. The Arresting Officer, Inmate and all witnesses were sworn to tell the truth.

LT  
Signature / Hearing Officer



Guilty

JCCW7-0254-2

## 13. Arresting Officer's Testimony (at the hearing):

On February 10, 2007, at approximately 4:20 PM, I, Officer Samuel Johnson observed you, inmate Dexter Holmes B/247684 in a physical altercation with inmate Ramon Cortez W/227510 on Draper's recreation yard behind F- Dorm.

QFHO: 1. Did you observe inmate Holmes fighting inmate Cortez? ANS. Yes

2. Are you positive it was inmate Holmes fighting? ANS. Yes. I saw them fighting but I didn't know their names.

3. Where were you? ANS. Tower #2.

4. Did you observe more than 2 inmates fighting? ANS. No.

## 14. Inmate's Testimony:

See attached.

QFHO:

1. Did you and inmate Cortez engage in a fight on the yard. ANS. Yes we did.

2. Was there more than one fight on the yard that day? ANS. I don't know.

Witness: Michael Moore B/155349

Substance of Testimony:

On that day, I was coming past the Basketball court. I noticed about 5 or 6 Mexican guys walking toward the urinals where inmate Holmes was. Some words were being said and one Mexican went up to Dexter and took a swing at him.

QFHO: 1. Did you observe a fight between inmate Holmes and inmate Cortez? ANS. Yes.

Witness: N/A

Substance of Testimony:

Witness: N/A

Substance of Testimony:

15. The inmate was allowed to submit written question to all witnesses. Copy of questions and answers are attached

  
Signature / Hearing Officer

16. The following witnesses were not called - Reason not called

1. N/A

N/A

2. \_\_\_\_\_

3. \_\_\_\_\_

DCC07-0254-2

17. After hearing all the testimony, the hearing Officer makes the following findings of fact: (Be Specific)

The Hearing Officer finds that:

Based on the sworn testimony of the Defendant under oath who stated he was involved in a fight with inmate Ramon Cortez W/227510, the testimony of the witness who stated that he observed inmate Holmes and Cortez fighting, and the Arresting Officer who stated that he observed inmates Holmes and Cortez fighting. Therefore the Hearing Officer finds that on 2/20/07 Officer S. Johnson observed inmates Dexter Holmes B/247684 and Ramon Cortez fighting on the Recreational Yard.

18. Basis for Finding of Fact:

Based on the sworn testimony of the Defendant, Witness and the Arresting Officer under oath, the Hearing Officer finds inmate Holmes guilty as charged.

19. Hearing Officer's Decision: XXX Guilty        Not Guilty

20. Recommendation of Hearing Officer:

45 Days loss of all privileges to include Store, Visiting, and Telephone. 45 Days extra duty on the Second Shift. Refer to Job Board and Classification for a review. (GTA=None)

Signature / Hearing Officer

Lieutenant Gwendolyn Tarrance  
Typed Name and Title

21. Warden's Action - Date 2/21/07

Approved                     

Disapproved                     

Other (Specify)                     

22. Reason if more than 30 calendar days delay in action.

23. I hereby certify that a completed copy of the foregoing Disciplinary Report was served on the above named inmate on this the 22 day of February, 2007, at (time) 5:50 (am/pm) pm

Signature / Serving Officer / Title

Inmate's Signature and AIS Number



DON SIEGELMAN  
GOVERNOR

STATE OF ALABAMA  
DEPARTMENT OF CORRECTIONS

MICHAEL W. HALEY  
COMMISSIONER

DRAPER CORRECTIONAL CENTER  
P.O. BOX 1107  
ELMORE, ALABAMA 36025

I/WE LIVING AGREEMENT

We acknowledge that our problem has been resolved and that we can live at this Institution without further incident and/or disagreement between us. This statement is made of our own free will without threats or promises from anyone. I/We also agree that a copy of this agreement will be placed in my/our Institutional file(s) and any violation of this agreement will result in disciplinary action for all parties concerned.

This agreement is to be made a part of the inmate's Institutional file and any violation of this said agreement will be brought to the immediate attention of the Warden and/or Deputy Warden.

NAME

AIS #

INMATE'S SIGNATURE

DATE

Tomas Garcia	W/237436	Tomas Garcia	2/10/07
Ramon Cortez	W/227510	Ramon Cortez	2/10/07
Dexter Holmes	B/247684	Dexter Holmes	2/10/07

WITNESS

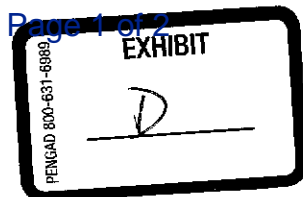
DATE

TIME

Sgt. Serja Rose

2/10/07

4:30pm



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

DEXTER REGENE HOLMES  
#247684

Plaintiff,

Vs.

JAMES DELOACH, et al.,

**Defendants.**

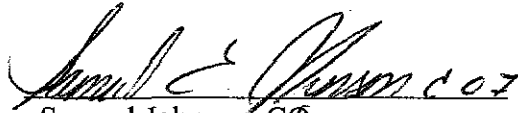
# AFFIDAVIT

Before me, a Notary Public in and for said County and State of Alabama at large,  
personally appeared Officer Samuel Johnson, who being known to me and by me first  
duly sworn, deposes, and says on oath as follows:

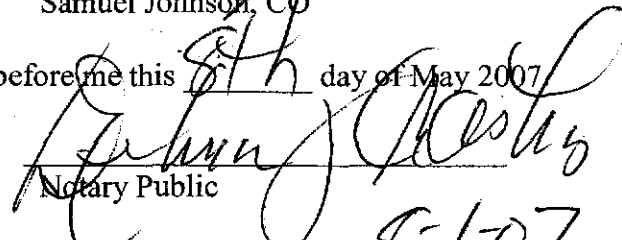
My name is Samuel Johnson. I am currently employed as a Correctional Officer with the Alabama Department of Corrections assigned to Draper Correctional Center, Elmore, Alabama 36025. I am over twenty-one years of age and have personal knowledge of the facts set forth below.

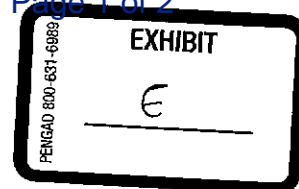
On February 10, 2007 I was assigned to Tower #2. At approximately 4:20 PM I observed two unknown inmates later identified as inmate Dexter Holmes, B/247684 and inmate Ramon Cortez, W/227510 engaged in a physical altercation on Draper's recreation yard behind F-Dorm. I immediately radioed to Officer Randall Hawn and all available units to report to the back of F-Dorm. Sgt. Sonja Rose and Sgt. Marvin Thomas and available officers responded to Draper's recreation yard. I identified inmates Cortez and Holmes via radio to Sgt. Rose. Sgt. Thomas and Officer Hawn searched both

inmates. Inmates Cortez and Holmes were handcuffed and escorted to the shift office by Sgt. Thomas and Sgt. Rose.

  
Samuel Johnson, CO

SWORN TO AND SUBSCRIBED before me this 8th day of May 2007

  
Notary Public  
My Commission Expire 8-1-07



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

DEXTER REGENE HOLMES, )  
#247684 )

Plaintiff, )

Vs. ) 2:07-CV-219-WKW

JAMES DELOACH, et al., )

Defendants. )

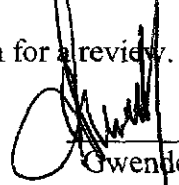
A F F I D A V I T

Before me, a Notary Public in and for said County and State of Alabama at large, personally appeared Lieutenant Gwendolyn Tarrance, who being known to me and by me first duly sworn, deposes, and says on oath as follows:

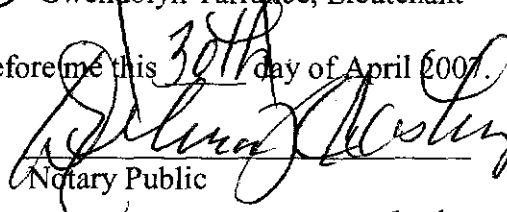
My name is Gwendolyn Tarrance. I am currently employed as a Correctional Lieutenant with the Alabama Department of Corrections assigned to Draper Correctional Center, Elmore, Alabama 36025. I am over twenty-one years of age and have personal knowledge of the facts set forth below.

On February 19, 2007 at approximately 8:00 PM I was the second shift supervisor at Draper Correctional Center and held a disciplinary hearing on inmate Dexter Holmes, B/247684 for rule violation #35, Fighting without a weapon. As the hearing officer, I listened to and recorded all the evidence presented by the arresting officer, defendant, and the witness. During this hearing inmate Holmes admitted to fighting with inmate Ramon Cortez, W/227510. Therefore, based on the testimony of the defendant, witness, and arresting officer, I rendered a guilty verdict. My recommendation was 45 days loss of all

privileges to include store, visiting and telephone, 45 days extra duty on the second shift,  
referral to job board and classification for a review.

  
Gwendolyn Tarrance, Lieutenant

SWORN TO AND SUBSCRIBED before me this 30th day of April 2007.

  
Notary Public

My Commission Expire 8-1-07